

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____	:	
BARRY LINTON,	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
NEW YORK LIFE INSURANCE AND ANNUITY	:	
CORPORATION,	:	C.A. No. 04-11362-RWZ
	:	
Defendant.	:	
_____	:	

**PLAINTIFF BARRY LINTON'S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, Plaintiff, Barry Linton, hereby moves the Court for an Order granting partial summary judgment in his favor as to liability of the Defendant, New York Life, on all remaining claims in this action. For the reasons set forth in the accompanying Memorandum of Law, entry of partial summary judgment is appropriate because there are no genuine issues of material fact concerning Plaintiff's breach of contract claim; there are no genuine issues of material fact as to the Plaintiff's misrepresentation claim; and there are no genuine issues of material fact as to Plaintiff's breach of the covenant of good faith and fair dealing claim.

The accompanying Memorandum of Law and attached Affidavits of Plaintiff, Barry Linton, and P. Andy Henderson, Jr., together with referenced attachments, are filed in support of this Motion and attached hereto and made a part hereof.

BARRY LINTON,

By his attorneys,

/s/ P. Andy Henderson
Richard J. Grahm (BBO #206620)
P. Andy Henderson, Jr. (BBO#655891)
Looney & Grossman, LLP
101 Arch Street
Boston, MA 02110
(617) 951-2800

February 13, 2006

CERTIFICATION UNDER LOCAL RULE 7.1

I, P. Andy Henderson, Jr., hereby certify that I conferred with counsel for the defendant in a good faith attempt to resolve or narrow the issues cause by the motion.

/s/ P. Andy Henderson
P. Andy Henderson, Jr.

CERTIFICATE OF SERVICE

I, P. Andy Henderson, Jr. an attorney with the law firm of Looney & Grossman LLP, hereby certify that on February 18, 2005, I served a copy of the foregoing **Plaintiff's Motion for Partial Summary Judgment as to Liability** on the following:

Levina Wong, Esq.
Ropes & Gray
One International Place
Boston, MA 02110-2624

/s/ P. Andy Henderson
P. Andy Henderson Jr., Esq.